IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A).Nos.2608 and 2609 of 2006

Commissioner of Income Tax
Chennai-600 034. .. Appellant in both T.Cs.

Vs.

Seethakathi Trust
688, Anna Salai,
Chennai-600 002. .. Respondent in both T.Cs.

Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench dated 8.3.2006 in ITA Nos.1188 and 1189/Mds/2004 for the assessment year 1996-97 and 1997-98.

For Appellant : Mr.N.Murali Kumaran

J U D G M E N T

(Delivered by P.D. DINAKARAN, J.)

The above tax case appeals are directed against the common order of the Income-tax Appellate Tribunal in ITA Nos.1188 and 1189/Mds/2004 dated 8.3.2006, raising the following substantial questions of law:

"1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled for exemption under section 10 (22) of the Income Tax Act ?

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2. When the assessee has utilised the funds of the Trust for purposes that are not in consonance with the objects of the Trust, is not the assessing officer right in denying exemption to the assessee under section 10(22) of the Income Tax Act ?

3. Even if the assessee violates the conditions of exemption, would the assessee still be entitled for exemption under section 10(22) of the Income Tax Act ?

2. The Revenue is the appellant. The relevant assessment years are 1996-97 and 1997-98. The assessee is a public charitable trust, which runs three educational institutions and a medical centre. They claimed exemption under Section 10 (22) of the Income Tax Act for three assessment years, viz., 1995-96, 1996-97 and 1997-98. For the assessment year 1996-97, the assessee filed a return on 5.2.97 declaring excess of expenditure over income of Rs.1,05,25,645/-. Since the similar expenditure was disallowed for the assessment year 1995-96, the assessing officer denied the exemption for the assessment year 1996-97 also by order dated 31.3.2003. The assessing officer was of the opinion that the assessee has violated the provisions of Section 11(5) read with 13(1)(d) of the Act and accordingly, denied the benefits of Sections 11 and 12 of the Act, consequent to which, the assessing officer computed the income of the assessee at Rs.73,25,645/-. Similarly, for the assessment year 1997-98, the assessee filed a return on 15.4.98 declaring excess of expenditure over income of Rs.80,50,210/- and for the same reason that weighed the assessing officer with regard to the rejection of exemption under Section 10(22) of the Act for the assessment year 1996-97, the assessing officer denied the exemption under Section 10(22) of the Act and also denied the benefits of Sections 11 and 12 of the Act holding that the assessee violated the provisions of Section 11(5) read with 13(1)(d) of the Act for the assessment year 1997-98 also, by the same order dated 31.3.2003.

3. Aggrieved by the said order of the assessing officer dated 31.3.2003, the assessee preferred appeals before the Commissioner of Income-tax (Appeals), who, by order dated 12.2.2004, held that the assessee is entitled to exemption under Section 10(22) of the Act since educational institutions are entitled for the benefit under Sections 10(22), 10(22A)

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and 10(23C) of the Act and for the said purpose, it is not necessary to consider the assessee's claim for deduction under Section 11 of the Act. Against the said order of the Commissioner, the Revenue went on appeal and the Tribunal, by order dated 8.3.2006, confirmed the order of the Commissioner taking note of its earlier order dated 5.1.2004 in the assessee's own case for the assessment year 1998-99, wherein it was held that since the assessee trust had been maintaining separate statement of accounts for educational and charitable activities and were not mingled with both activities and as such, the assessee trust being carrying on the activity of educational purposes, it is entitled for exemption under Sections 10(22), 10(22A) and 10(23C) of the Act and in which case, it is not necessary to pass an order in respect of the alternative plea of the assessee trust in regard to the deduction under Section 11 of the Act.

4. That part, the Central Board of Direct Taxes, themselves, issued a circular bearing No.712 dated 25.7.1995 to the effect that the educational institutions are entitled for exemption under Section 10(22) of the Act and consequently, the benefit conferred under Section 10(22) cannot be denied on the ground of violation of Section 11(5) of the Act. The said circular reads as follows:-

Circular No.712, dated 25th July, 1995.

Subject: Investment of funds by educational institutions covered under section 10(22) of the Income-tax Act - Clarification regarding.

Under section 10(22) of the Income-tax Act, any income of a University or other educational institution, existing solely for educational purposes and not for purposes of profit, is exempt from tax.

2. The Board have received representations from various institutions which fulfil the conditions laid down under section 10(22) of the Act, but are denied exemption because their funds are not invested in accordance with the provisions of section 11(5) of the Act. It is hereby clarified that since section 10(22) does not impose any restriction regarding mode of investment of funds, such institutions are not

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required to invest their funds in the modes specified under section 11(5) of the Income-tax Act. This clarification will not apply to the institutions seeking exemption under section 11 of the Act."

(sd.)
Under Secretary to
the Government of
India.

5. Since the substantial questions of law raised in these appeals are centrifuged on the point whether the assessee is entitled for the benefit of Section 10(22) of the Act in view of the alleged violation of Section 11(5) read with 13(1)(d) of the Act, in view of the above circular of the C.B.D.T. dated 25.7.1995, we do not see any substantial question of law that arises for our consideration.

Accordingly, finding no substantial question of law arises for consideration, the appeals stand dismissed.

sra

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The Assistant Registrar
Income Tax Appellate Tribunal,
Rajaji Bhavan, III Floor,
Besant Nagar, Chennai - 600 090.

2.The Assistant Registrar,
Income Tax Appellate Tribunal
Bench "B", Chennai.

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3.The Commissioner of Income Tax
(Appeals), Chennai.

4.The Commissioner of Income Tax,
Chennai - 600 034.

5.The Assistant Director
of Income-tax, (Exemptions)-I,
Chennai.

TWO CC TO MR.N. MURALIKUMARAN, ADVOCATE SR NOS 59898, 59899

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MS(CO)

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